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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/708,151	02/11/2004	Larry L. Chrisco	34596	2150
23589	7590	07/02/2004		
HOVEY WILLIAMS LLP 2405 GRAND BLVD., SUITE 400 KANSAS CITY, MO 64108			EXAMINER HAYES, BRET C	
			ART UNIT 3644	PAPER NUMBER

DATE MAILED: 07/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/708,151

Applicant(s)

CHRISCO ET AL.

Examiner

Bret C Hayes

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3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19-53 is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☒ Claim(s) 1,16-18,35 and 52 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 05/14/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Objections*

1. Claims 1, 35 and 52 are objected to because of the following informalities: claim 1, line 9, claim 35, lines 6 and 13, and claim 52, line 7, recite "its", use of which should be avoided and the term replaced with a more definite recitation of the limitation. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 – 3 and 6 – 15 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,078,096 to Bishop et al. (Bishop).

4. Re – claim 1, Bishop discloses the claimed invention including a collapsible pet carrier, comprising: a base **20**; a frame **10** secured to said base **20** and selectably shiftable between a collapsed position, see Title, for example, proximal to the base **20** and an extended use position, see Fig. 1, for example; and a flexible cover **11**, said frame **10** movable from the collapsed position to the extended position thereof of its own accord and without manual manipulation of the frame **10\***, see col. 4, line 4. Since Bishop discloses the rods **14**, **18** being formed of semi-rigid, resiliently deformable material, the frame **10** would move from a collapsed position to an extended position of its own accord and without manual manipulation.

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5. Re – claim 2, Bishop discloses the claimed invention further including the frame **10** formed of elongated, resilient shape memory material, set forth at col. 4, line 4.
6. Re – claim 3, Bishop discloses the claimed invention further including the material comprising resilient metal or synthetic resin having shape memory, col. 4, line 14.
7. Re – claim 6, Bishop discloses the claimed invention further including the frame **10** secured to the base **20**.
8. Re – claims 7 and 8, Bishop discloses the claimed invention further including the flexible cover **11** formed from a fabric material, the material selected from the group consisting of synthetic resin, fabrics and canvas, set forth at col. 4, line 26.
9. Re – claim 9, Bishop discloses the claimed invention further including the cover **11** secured to the base **20**, set forth at col. 4, line 22.
10. Re – claim 10, Bishop discloses the claimed invention further including the cover **11** including an elongated attachment rod **14** secured to a lower end, the rod **14** engageable by couplers **23** affixed to the base **20**.
11. Re – claim 11, Bishop discloses the claimed invention further including the cover **11** presenting at least one window opening **12** covered by a generally transparent material **40**.
12. Re – claim 12, Bishop discloses the claimed invention further including the generally transparent material **40** comprising a mesh material, set forth at col. 5, line 61.
13. Re – claim 13, Bishop discloses the claimed invention further including a non-transparent segment **42** secured to the cover **11**.
14. Re – claim 14, Bishop discloses the claimed invention further including an access door **26** formed in the cover **11** and selectively openable.

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15. Re – claim 15, Bishop discloses the claimed invention further including a base 13 being formed of substantially rigid synthetic material, set forth at col. 6, line 22.

***Claim Rejections - 35 USC § 103***

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop.

18. Re – claim 4, Bishop, as applied above, discloses the claimed invention except for the material comprising music wire. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the material comprise music wire, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. In this case, since Bishop discloses the rods being formed of semi-rigid, resiliently deformable material, set forth at col. 4, line 4, any such material would have been obvious to one of ordinary skill in the art at the time the invention was made.

19. Re – claim 5, Bishop, as applied above, discloses the claimed invention except for the frame 10 being formed of a unitary, endless length of material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the frame of a unitary, endless length of material, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1983). Further, it has been held that the term

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“integral” is sufficiently broad to embrace constructions united by such means as fastening and welding. *In re Hotte*, 177 USPQ 326, 328 (CCPA 1973). Further, it is well known in the self-erecting structure art to use a unitary, endless length material, see US Patent No. 5,601,105 to Blen et al., for example.

***Allowable Subject Matter***

20. Claims 19 – 53 are allowed.

21. Claims 16 – 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action, including all of the limitations of the base claim and any intervening claims.

22. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record neither discloses nor fairly teaches the claimed combination including, but not limited to, a top engageable with a base to cooperatively form a housing for a frame in a collapsed position, a cover being situated with the housing, and the top serving to maintain the frame in the collapsed position.

23. This statement is not intended to necessarily state all the reasons for allowance or all the details why the claims are allowed and has not been written to specifically or impliedly state that all the reasons for allowance are set forth (MPEP 1302.14).

***Conclusion***

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

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If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone, can be reached at (703) 306 – 4198. The fax number is (703) 872 – 9306.

bh

6/17/04



MICHAEL J. CARONE  
SUPERVISORY PATENT EXAMINER